

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JUDITH H. WEISS,

Index No. 07-CV-5712

Plaintiff(s),

**AFFIRMATION**

-against-

Return Date:

FRANCES M. CREEM and BETTY M. OLSEN,

**April 11, 2008**

Defendant(s).

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SHAWN P. O'SHAUGHNESSY, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York and the within jurisdiction, affirms the following under the penalties of perjury:

1. I am an associate attorney with the law offices of **DESENA & SWEENEY, LLP**, attorneys of record for defendant, FRANCES M. CREEM. As such, I am fully familiar with the facts and circumstances surrounding the proceeding by way of review of the file maintained in this matter by your affirmant's office.
2. This affirmation is made with respect to the motion for summary judgment brought by defendant BETTY M. OLSEN.
3. At the outset, this office received a Stipulation of Discontinuance from Ms. OLSEN's counsel prior to the motion at issue. I indicated our willingness to discontinue our cross-claim once the plaintiff had discontinued their Complaint against Ms. OLSEN.
4. I then learned from counsel that plaintiff would only discontinue their Complaint upon the condition that defendant CREEM would not seek

apportionment of liability at the time of trial pursuant to General Obligations Law Section 15-108. A copy of the proposed Stipulation of Discontinuance is annexed hereto as **Exhibit "A"**.

5. Defendant CREEM cannot discontinue under the above referenced terms.
6. The above issue aside, defendant CREEM remains willing to sign a Stipulation of Discontinuance which does not contain any reference to General Obligations Law 15-108.
7. I have communicated the foregoing to counsel for defendant OLSEN on this date. He has indicated that plaintiff's counsel has not signed any Stipulation of Discontinuance.

Dated: Hauppauge, New York  
March 26, 2008

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SHAWN P. O'SHAUGHNESSY (SO-6081)